IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7635 of 2005

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRAVIJAYSINH BHIKHUBHA GOHIL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
Mr. Girish Patel with Mr. AJ Yagnik for petitioner.

Mr. AD Oza with Mr. VM Pancholi for respondent no.1.

Mr. JR Nanavati with Mr. AR Thacker for respondent Nos.2-3

Mr. BB Naik with Mr. Bhargav N. Bhatt for respondent no.4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 26/10/2005

CAV JUDGMENT

1.0 This petition is directed against the order passed by respondent no.1 dated 8.4.2005 whereby the State of Gujarat cancelled the nomination of the petitioner as Member of the Executive Council of the respondent Bhavnagar University by the Vice-Chancellor from 7.11.2003 in exercise of power under section 18(1)(iii) of the Act read with Statutes framed under the Act.

2.0 The short facts of the case as emerging from the petition are as under:

2.1 The petitioner is a Lecturer/Reader of Gujarati in the respondent Bhavnagar University. He has been teaching Gujarati to Postgradaute students of the Department of Gujarati in Bhavnagar University since last 14 years.

2.2 The petitioner was elected as a Member of the Court of Bhavnagar University constituted on 18.10.2003 from the constituency of the Teacher of University Department. There are two seats of teachers in the Executive Council of the University for this Constituency and there are some seats for undergraduate Teachers in the University Court.

2.3 In October 2003 the University Court was constituted. The petitioner and the respondent No.4, Dr. P.N. Bhatt were elected from the Constituency

of the teacher of University Department (other than the heads of the Department). As per section 18(1)(vii) of the Bhavnagar University Act, one of the two teachers is to be nominated to the Executive Council by the respondent Vice-Chancellor in exercise of his powers vested in Statute 81(1)(iii).

2.4 The Vice-Chancellor, in the process, nominated the petitioner. The petitioner was not nominated even once from the very constituency in past as a member of the Executive Council. Therefore he was given preference in the nomination over the respondent No.4. In pursuance of the same a Circular was issued on 5.11.2003 by the Bhavnagar University constituting Executive Council on 7.11.2003 under section 18(1) of the Act.

3.1 Being aggrieved by the nomination of the petitioner as a Member of the Executive Council by the Vice-Chancellor of Respondent University, the respondent No.4 made a Reference Application to the State of Gujarat against the Vice-Chancellor on 17.11.2003. Since action of university was challenged, only University was joined as party respondent and the petitioner was not joined as a party to the Reference Application. It may not be out of place to notice that proceedings pending before the State Government were not known to the petitioner.

3.2 The State of Gujarat, after hearing the respondent University and respondent No.4, passed the order dated 8.4.2005 and thereby cancelled the decision of Vice Chancellor nominating the petitioner as a member of the Executive Council of the respondent Bhavnagar University and directed to appoint respondent No.4 as a Member of the Executive Council from the Constituency of the Teacher of University Department.

3.3 On coming to know about the aforesaid order the petitioner wrote a letter to the Vice-Chancellor and Registrar of University and copy therefore was sent to Chief Minister, Education Minister, etc. On 11.4.2005 the petitioner received a reply from the respondent University stating that the petitioner should approach the respondent State of Gujarat for redressal of the grievances in respect of the order dated 8.4.2005.

4.0 According to the petitioner, the joint meeting of Executive Council and Academic Council of the respondent Bhavnagar University was held on 12.4.2005, wherein the Vice Chancellor allowed the petitioner to act as a Member of the Executive Council and vote as well. Thereafter the petitioner made a representation to the Chancellor of the University, His Excellency the Governor and the State of Gujarat on 18.4.2005. However, no reply has been received.

4.1 Under the aforesaid circumstances the petitioner has filed the aforesaid petition challenging the order dated 8.4.2005.

5.0 Mr. Girish Patel, learned Senior Advocate, appearing for the petitioner raised the following contentions.

5.1 That the order has been passed without providing the petitioner with any opportunity of being heard. According to him, though the petitioner is the most vitally affected person, as his nomination as a member of the Executive Council by the respondent Vice Chancellor was cancelled, he should have been afforded an opportunity of hearing.

5.2 That the order has been passed in violation of section 67(2)(b)(i) of the Act inasmuch as the mandatory opportunity of being heard to the petitioner was not afforded to him at all. According to him, the entire proceedings about the cancellation of nomination of the petitioner as a Member of Executive Council of the respondent Bhavnagar University was held behind his back.

5.3 That the order in question is not a reasoned one and is absolutely vague.

5.4 That the order is an exparte order. According to the petitioner, the

respondent University is not actually the affected party which was joined as an only opponent and the petitioner was not joined deliberately in order to keep the petitioner absolutely out of process of law.

5.5 That the order has been passed in violation of the provisions of section 18(1)(vii) of the Act read with Statute 81(1)(iii) of the Statutes framed under the Act for the respondent University and therefore it is illegal and unlawful.

5.6 That the Reference Application of the respondent No.4 was lying unheard since it was filed in the year 2003. Suddenly on 8.4.2005 the application was heard and on the very day a cryptic order has been passed. According to the petitioner, he was sought to be prevented from attending the joint meeting of the Executive Council and the Academic Council that was held on 12.4.2005 in order to constitute one member of a Search Committee who would later on after due exercise suggest names of prospective Vice Chancellor of the respondent University.

5.7 That every nomination made by the Vice Chancellor even from amongst the other constituencies in the year 2003, is based on the policy of rotation. In other words, every nomination is influenced by the policy of rotation and those who were nominated once in the past from amongst other constituencies where consciously overlooked and not nominated. Therefore

the Vice Chancellor has while filling up the positions and the posts adopted uniform policy for every constituency and therefore there is no discrimination in so far as not nominating respondent No.4 is concerned.

5.8 That the length of service or seniority is a factor to be considered while preparing list of teachers for nomination. But the very next logical step of nomination has to be in the backdrop of the requirement of rotation and not repetition as per the Bhavnagar University Act. The nomination of the petitioner is actuated out of the policy of rotation, whereas the respondent No.4 insists that he ought to have been nominated which would mean repetition and consequent violation of section 18 of the Act read with Statute 81 of the Statutes framed under the Act.

6.0 Mr. Patel has relied upon the following decisions in support of his contentions.

6.1 In the case of Gujarat University Vs. N.U. Rajguru and Ors., reported in GLR 1988-1 Volume 29, Page No. 308 it is held as under:

> "It is settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right,

> instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Art. 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But extraordinary circumstances may exist of justify by-passing the alternative remedies. In the instant, case, there existed no circumstance justify departure from the normal rule as even the challenge to the validity of statute 10 was not pressed by the respondents before the High Court. (Para 6)

6.2 In the case of Udit Narayan Singh Vs.Board of Revenue, reported in AIR 1963 Supreme Court Page No. 789, in para 9 it is held as under:

> (9) The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, <u>is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party. (emphasis supplied)</u>

6.3 On the basis of the aforesaid contentions, learned counsel for the

petitioner submitted that the petition deserves to be allowed and the prayers made in this petition require to be granted.

7.0 Mr. J.R. Nanavati, learned Senior Advocate appearing for respondent nos.2 and 3 made the following submissions:

7.1 The Vice-Chancellor by order dated 7.11.2003 nominated the petitioner as the member of the Executive Council under Clause (vii) of sub-section (1) of Section 18 of the Bhavnagar University Act. The Vice Chancellor, before he took decision to nominate the petitioner as a member of the Executive Council under clause (vii) subsection (1) of section18 of the Act directed to submit the seniority list of teachers in Bhavnagar University Department, except Head of the Department and the said list was submitted to the Vice Chancellor. In the said seniority list the respondent no.4 was at serial no.15 and the petitioner was at serial no.18. The said seniority list showed that respondent no.4 was a member of Executive Council from 18.10.1998 to 6.11.2000 and Shri H.N. Waghela who was at serial no.16 was member of the Executive Council from 7.11.2000 to 17.10.2003. According to the learned counsel, the decision taken by the Vice Chancellor to nominate the petitioner as a member of the Executive Council was legal and proper and provisions of Statue will prevail over the provisions of the Act.

7.2 That neither of the respondents have raised objection before the first respondent in respect of the power to entertain reference and even after passing of the order by the first respondent, the same was not challenged by them before any court of law.

7.3 That the Vice Chancellor by letter dated 11.4.2005 written to the Government sought clarification of the order passed by the Government, but the respondent no.1 by letter dated 12.4.2005 informed the respondent no.2 to implement the order of the first respondent on and from 12.4.2005 and it was informed that no further clarification was necessary.

7.4 That the respondent no.1 has no power or authority to entertain, deal with or to decide the application filed by the respondent no.4 against the order passed by the Vice Chancellor dated 7.11.2003 nominating the petitioner as a Member of the Executive Council.

7.5 According to these respondents, the subject matter of the order of the Government does not involve interpretation of any provisions of the Act or any statute and the petitioner was nominated by the Vice Chancellor and he was not “appointed” as envisaged by sub-clause (1), subsection (2) of section 67 of the Act. According to the learned counsel, the provisions contained in sub-clause (vii) of sub-section (1) of Section 18 of the Act and statute 81(i)(iii) are

clear and does not require any interpretation and decision of the Vice Chancellor is in relation to nomination of a teacher and not relating to election or appointment.

7.6 According to the learned counsel, the respondent no.1 has no power or authority to set aside the order of Vice Chancellor dated 7.11.2003 or to direct the respondent no.2 to appoint the respondent no.4 as a member of the Executive Council.

7.7 Thus, the learned Advocate for the respondent nos.2 and 3 supported the case of the petitioner.

8.0 Mr. A.D. Oza, Learned Government Pleader, appearing for the respondent no.1 submitted that the order passed by the State Government is just and proper and no interference is called for at the hands of this Court. He submitted that there is no violation of violation of fundamental rights of the petitioner. Apart from that University was heard and if at all it was open for University to inform the petitioner about the proceedings.

8.1 According to him the petitioner does not have any statutory or legal right pertaining to nomination to Executive Council. Since the petitioner was illegally and wrongly nominated, his cancellation as member does not amount

to violation of any right of the petitioner.

8.2 Mr. Oza submitted that the petitioner is not entitled to be nominated in view of provisions of section 18(1)(vii) of Bhavnagar University Act, read with Statute 81(1)(iii).

8.3 He further submitted that the respondent no.4 is senior to the petitioner and respondent no.4 has secured 12 votes as against 11 votes secured by the petitioner.

8.4 According to Mr. Oza, since the Act and the Statute provides for preparation of a “list of teachers”, for the purpose of nomination, rotation has to be made from amongst the persons named in such list and therefore the petition is misconceived and requires to be rejected. It is also submitted that brief reasons are given in the order.

9.0 Mr. B.B. Naik, learned Advocate appearing for the respondent no.4 supported the order of the State Government. He submitted that there is no violation of fundamental rights of the petitioner and that in view of the provisions of the Act and Statute the petitioner is not entitled to be nominated. He contended that reasons are briefly given in the order.

9.1 He submitted that the Vice Chancellor is given no discretion or choice while making the nomination under the Act since the statute clearly directs that the list of teachers shall be prepared on the basis of seniority; that the respondent no.4 is senior to the petitioner and his name appears at serial no.1 and prior to the petitioner in the notification issued by the University with regard to the election of Court and that the petitioner has got less votes than the respondent no.4 in the election.

9.2 According to him, on a wrong interpretation of word “rotation”, the Vice Chancellor favoured the petitioner which is evident from the fact that the Vice Chancellor has allowed the petitioner to participate in the meeting in disregard to the order of the State Government and that if the true meaning of “Rotation” is given, the petitioner cannot be nominated by the Vice Chancellor. The learned Advocate, therefore, submitted that the petition deserves to be rejected.

9.3. The dictionary meaning of the word Rotation is “succession in definite order”.

9.4 While admitting the matter on 13.5.2005 this Court passed a detailed order wherein it is stated as under:

> "... The present Special Civil Application is admitted only to consider the contention with regard to the fact whether the petitioner was required to be heard or not while quashing and setting aside the resolution of the University nominating the petitioner as it is the contention on behalf of the State Government that Section 67 does not contemplate any hearing and it is the case of the petitioner that the order is passed under Section 67(2)(b) of the Act. It is required to be noted that the impugned order is passed for and on behalf of His Excellency the Governor of Gujarat who is the Chancellor of Bhavnagar University."

10. Mr. Naik has, in support of his contentions, relied upon the following decisions.

10.1 In the case of Nagendra Nath v. Commr. Of Hills Division reported in AIR 1958 SC 398.

> "(17) The next ground of attack against the order of the High Court, under appeal, was that the High Court had erred in coming to the conclusion that there had been a failure of natural justice. In this connection, the High Court has made reference to the several affidavits filed on either side, and the order in which they had been filed, and the use made of those affidavits or counter-affidavits. As already indicated, the rules make no provisions for the reception of evidence oral or documentary, or the hearing of oral arguments, or even for the issue of notice of the hearing to the parties concerned. The entire proceedings are marked by a complete lack of formality. The several authorities have been left to their own resources to

> make the best selection. In this connection, reference may be made to the observations of this Court in the case of New Prakash Transport Co., Ltd. v. New Suwarna Transport Co., Ltd., 1957 SCR 98: ((S) AIR 1957 SC 232) (G). In that case, this Court has laid down that the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions. In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the Appellate Authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, is no ground for interference either under Art. 226 or Art. 227 of the Constitution."

10.2 In the case of Ravi S. Naik Vs.Union of India and others, reported in AIR 1994 SC 1558 it is held that whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case. Paragraphs 19, 20, 21, 22, 23 and 24 read as under:

> "19. Shri Sen has next contended that there has been violation of principles of natural justice inasmuch as in disregard of the provisions of R.7(3)(b)of the Disqualification Rules which provides for the comments being forwarded by the member concerned to the Speaker within a period of seven days of the receipt of the copy of the petition and annexures thereto; the appellants were given only town days time to file their reply to the petition. Shri Sen has urged that there has been violation of the principles of natural justice also for the reason that in the impugned order the Speaker has referred to certain extraneous materials and, circumstances, namely, the copies of the newspapers that were produced by Dr. Jhalmi at the time of hearing and the talks which the Speaker had with the Governor. Another grievance raised by Shri Sen was that the appellants were denied the opportunity to adduce their evidence before the Speaker passed the impugned order.

20. Principles of natural justice have an important places in modern Administrative Law. They have been defined to mean “fair play in action”. (See: Smt. Maneka Gandhi v. Union of India, (1978) 2 SCR 621 at p 676: (AIR 1978 SC 597 at p 625), Bhagwati,J.). As laid down by this Court “they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men” (Union of India v. Tulsi Ram, 1985 Supp(2) SCR 131 at p 225): (AIR 1985 SC 1416 at p.1456)). An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that “they are not immutable but flexible” and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

21. the approach of the English Courts has been thus summed up by Prof. Wade:

“The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to their scope and extent. Everything depends on the subject-matter. The so-called rules of natural justice are not engraved on tablets of stone. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant there is no such thing as a merely technical infringement of natural justice.”

[H.W.R. Wade : Administrative Law, 6th Edn., p.530]

22. Similarly Clive Lewis has stated:

“The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him

relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief.

The courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing."

[Clive Lewis: Judicial Remedies in Public Law(1992) p.290]

23. In the words of Lord Wilber force:

"A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain." [Malloch v. Aberdeen Corporation (1971) 2 All ER 1278 at p. 1294] (emphasis supplied)

24. The approach of the Courts in India is no different. In A. M. Allison v. B.L. Sen, 1957 SCR 359 : (AIR 1957 SC 227), it has been laid down that while exercising the jurisdiction under Article 226 of the constitution the High Court has the power to refuse the writes if it was satisfied that there has no failure of justice." (Emphasis supplied)

10.3 In the case of M.C. Mehta Vs. Union of India, reported in AIR 1999 SC 2583 in paragraphs 22 and 23 the Supreme Court held as under:

"22. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice.

23. Before we go into the final aspects of this contention, we would like to state that a cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases here is a considerable case law and literature as to whether relief can be refused even if the Court thinks that the case of the applicant is

not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch V. Aberdeen Corporation, (1971)1 WLR 1578, (per Lord Reid and Lord Wilberforce) Glynn V. Keelee University, (1971) 1 WLR 87, Cinnamond V. British Airport Authority, 1980(1) WLR 582 and other cases where such a view has been held. The latest addition to this view is R. V. Ealing Magistrates' Court exp. Fannaran, (1996)8 Admn LR 351 (358) (See Desmith Suppl. P.89) (1998) where Straughton L.J. held that there must be “demonstrable beyond doubt” that the result would have been different. Lord Woolf in Lloyd V. McMahon (1987) 2 WLR 821(862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy V. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is “real likelihood – not certainly – of prejudice”. On the other hand, Garner administrative Law (8th Edition 1996, pp.271-272) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge V. Baldwin (1964 AC 40), Megarry J. In John V. Rees, (1969)2 WLR 1294, stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the Court but for the authority to consider. Ackner, J. has said that the “useless formality theory” is a dangerous one and, however, inconvenient, natural justice must be followed. His Lordhsip observed that “convenience and justice are often not on speaking terms”. More recently Lord Bingham has deprecated the “useless formality” theory in R. v. Chief Constable of the Thames Valley Police Forces exp. Cotton 1990 IRLR 344, by giving six reasons. (see also his article “Should Public Law Remedies be Discretionary” 1991 PL 64). A detailed and emphatiac criticism of the “useless formality theory” has been made much earlier in “Natural Justice, Substance or Shadow” by Prof. D.H. Clark of Canada (see 1975 PL pp 27-63) contending that Malloch and Glynn were wrongly decided. Foulkes (Administrative Law, 8th Ed. 1996, P.323), Craig (Administrative Law, 3rd Ed. P.596) and others say that the Court cannot pre-judge what is to be decided by the decision-making authority. DeSmith (5th Ed. 1994 paras 10.031 to 10.036) says Courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (Administrative Law, 5th Ed. 1994, pp.526-530) says that while futile writs may not be issued,

> a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. we may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the Courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. we may also state that there is yet another line of cases as in State Bank of Patiala V.S.K. Sharma, (1996)3 SCC 364: (1996 AIR SCW 1740: AIR 1996 SC 1669), Rajendra Singh v. State of M.P. (1996)5 SCC 460: (1996 AIR SCW 3424: AIR 1996 SC 2736), that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived."

10.4 In the case of Aligarh Muslim University v. Mansoor Ali Khan reported in AIR 2000 Supreme Court Page 2783 the Supreme Court held as under:

> (20) As pointed recently in M.C. Mehta v. Union of India. (1999) 6 SCC 237: 1999 AIR SCW 2754: (AIR 1999 SC2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Government of Andhra Pradesh, (1965) 2 SCR 172 : (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice.
>
> (23) The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India, (1984) 1 SCC 43 :

(AIR 1984 SC 273: 1983 Lab IC 1680), Sabyasachi Mukharji, J. (as he then was) also laid down principle that not mere violation of natural justice but defacto prejudice (other than non-issue of notice) had to be proved. It was observed : quoting Wade Administrative Law (5th Ed. Pp. 472-475) as follows (Para 31):

"..... it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent..... There must have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364: (1996 AIR SCW 1740 : AIR 1996 SC 1669). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P., (1996) 5 SCC 450 : (1996 AIR SCW 3424 : AIR 1996 SC 2736).

11.0 Before proceeding further, it would be required to refer to the relevant provisions of the Act and the Statute. Section 18(1)(vii) of the Bhavnagar University Act reads as under:

"18(1) The Executive Council shall be the executive authority of the University and shall consist of the following, namely:

xxx xxx xxx

(vii) One teacher of a University Department, other than the Head of University Department to be nominated by the Vice-Chancellor by rotation from amongst the members of the Court

in the manner specified by the Statutes.

11.1 The relevant Statute framed under the Act on the subject reads as under:

> "Statute 81(1)(iii): Nomination of a Teacher of University Department, Other than the Head.
>
> A list of teachers in University Departments (other than Head of University Departments) shall be prepared according to their length of service in University Departments. While making nomination under Section 18(i)(vii) of the Court to the Executive Council, this list shall be followed.
>
> Provided that teachers of University Departments nominated under Statute-81(i)(ii) and 81(i)(v), shall be excluded while making nominations under Section 18(1)(vii) of the Act. In the matter dispute or doubt the decision of the Vice-Chancellor shall be final."

11.2 A conjoined reading of the aforesaid provisions of the Act and Statute clearly state that a list of teachers in the University Department has to be prepared. The said list has to be prepared on the basis of length of service i.e. seniority. It is required to be noted that the Vice Chancellor is not given any discretion or choice while making the nomination under section 18(1)(vii) as the statute clearly directs that the list shall be prepared on the basis of seniority and rotation for the term of Executive Council. Thus, nomination will be governed by section 18 and not by Statute. It is required to be noted that rotation has to be with reference to the term of Executive Council and not with the individual person holding the post. Otherwise it cannot have true meaning

of the provisions of the Act.

12.0 Certain facts are not in dispute. The respondent no.4 is senior to the petitioner. The name of the respondent no.4 appears at serial no.1 and prior to the petitioner in the notification issued by the University with regard to the election of Court. Further, the petitioner has got less votes than the respondent no.4 in the election. On a plain reading of the said provisions of the Act and the Statute, while considering the nomination the Vice Chancellor has to bear mind the length of service put in by the candidate in the concerned Department. Admittedly the respondent no.4 is senior to the petitioner and therefore the decision of the Vice Chancellor was contrary to the Act. Therefore, I am of the view that the contention raised on behalf of the petitioner in this regard cannot be accepted.

12.1 A contention has been raised that no opportunity has been given to the petitioner while passing the impugned order. In this regard section 67 of the Bhavnagar University Act,1978 is required to be seen, which reads as under:

> "67. Where any question arises as to if any question arise regarding the interpretation of any:
>
> (1) The interpretation of any provision of this Act, or of any Statute, Ordinance, Regulation or Rule,or

> (2) Whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be a member of any authority or other body of the university,
>
> [a] it may be referred to the State Government if:
>
> [i] it relates to a matter as specified in clause (2), or,
>
> [ii] if twenty members of the Court so require, irrespective of whether it relates to a matter specified in clause (1) or clause (2); and the State Government shall after making such inquiry as it deems fit (including an opportunity of being heard where necessary) decide the question and its decision shall be final".

A perusal of the aforesaid section makes it clear that there is no such provision for an opportunity of being heard for removal or cessation referred to in sub-section (2) of section 67.

12.2 Hearing is contemplated only in such case where 20 members of Court required a reference made to the State Government relating to any matter which may or may not be specified in clause 1 or clause 2 of section 67. It is an admitted fact that the Vice Chancellor was heard and he was given ample opportunity of representing the case before the State Government. Therefore the contention that no opportunity of being heard was given to the petitioner is misconceived inasmuch as the decision making authority viz. Vice Chancellor who has nominated the name of the petitioner. In fact it is the decision of the Vice Chancellor which has been reversed or cancelled and therefore it cannot be said that the order is vitiated because the petitioner was not given an

opportunity of being heard.

12.3 As per The Oxford English Dictionary, Second Edition, “Nomination” is the action (or right) of appointing a person by name to some office or duty. Therefore, it cannot be said that the petitioner was conferred with a specific right to be appointed on a particular post. In fact, the concerned party has been heard and after considering the merits of the matter the State Government has taken a decision to reverse the same. In any case it cannot be said that fundamental rights of the petitioner have been violated in view of the impugned decision so as to warrant interference of this Court. Moreover, no infirmity is shown to point out that the case of the petitioner is not considered.

12.4 I also find no substance in the contention raised by the petitioner with regard to “Rotation”. The term “Rotation” used in the provisions for nominations must be given its true meaning. While considering the word “rotation”, the related events are to be considered. Firstly, there shall be an election to the Court. Secondly, a list of teachers as per seniority shall be prepared. Thirdly, teachers from such list shall be nominated. Then such nomination shall be in rotation i.e. after a senior, his junior shall be nominated, so as to ensure that each candidate who is in the “List of Teachers” as per seniority gets a chance to be nominated. In view of the fact that the term of

the Court is for a period of five years and the term of executive is three years, senior Teachers should be appointed for three years and the junior members should have a chance to represent remaining two years. This is with a view to see that even if the term of the Court is reduced or is dissolved by any chance, the senior member should not be deprived of his right to nomination to the Executive Council. In that view of the matter the rotation has to be with reference to the term of the Court and not the manner in which the Vice Chancellor has tried to interpret. The term of “rotation” is to be read with term of “court”. As per the meaning of “nomination” is the action (or right) of appointing a person by name to some office or duty. If such a meaning is accepted, seniority which is the basis for nomination will be given a go-by, which cannot be allowed. Apart from that the purpose for which this provision is introduced is to see that a senior gets chance for three years and at the same time juniors are also given chance to be a member of the Executive Council.

12.5 As regards the contention that the order in question is an unreasoned order, it is required to be noted that the authority has given reason that the interpretation with regard to rotation has been wrongly made and the correct criterion is the seniority. It is on that ground the order was passed. Therefore, I am of the opinion that it cannot be said that the order is not a reasoned order.

12.6 It may be that the order is not a well-explained or well reasoned order, but the meaning is conveyed which was weighed with the authority. It is a quasi judicial authority and not a trained judicial mind. The Court has examined the matter on merits keeping in mind the interest of all concerned including administration.

12.7 Apart from that, the Vice Chancellor has accepted the order. It is, therefore, implied that the University has accepted the reasons given by the authority.

12.8 Learned counsel for the petitioner has submitted that in similar circumstances the Government has dismissed the appeal and therefore the present order requires to be set aside. Firstly, it is required to be noted that this Court is not bound by the decision taken by the appellate authority in other matters. The Government might have taken certain decisions in other matters, depending upon the facts and circumstances of each case. This Court has to see the particular facts of the case while deciding the matter and merely because the Government has taken a different view in another matter would not bind this Court in taking an independent view of the matter.

13.0 A query was put to the learned Advocate for the petitioner, as to what

is the defence of the petitioner in view of the provisions of the Act and the Statute, admittedly he could not deny the fact that the petitioner is junior to respondent no.4 and respondent no.4 was not a member of Executive Council when the last term of the Court was over. Learned counsel stated that it is the right of hearing which has been affected before the State Government which will be disclosed only before that authority. In this regard it is required to be noted that right from the date of appointment the petitioner wants to complete the three years term by continuing this process which cannot be allowed in view of the decision in the cases of Ravi S. Naik Vs. Union of India and others and Aligarh Muslim University (supra). The petitioner cannot claim as a matter of right the nomination, when the Vice Chancellor himself has accepted the said decision of the State Government.

14.0 Thus, as stated hereinabove, it is an admitted position that the petitioner is junior to the respondent no.4, the name of respondent no.4 is at serial no.1 and prior to the petitioner in the notification issued by the University with regard to the election of Court, the petitioner got less votes than the respondent no.4 in election and therefore the Vice Chancellor was not justified in nominating the petitioner in clear violation of the provisions of the Act and the Statute. When the nomination itself is against the provisions of law, it cannot be said that the fundamental rights of the petitioner has been violated nor he was denied opportunity of hearing. In fact the concerned

authority which nominated the petitioner has been heard. Therefore, the contentions raised on behalf of the petitioner cannot be accepted.

15.0 In the premises aforesaid, I do not find any merits in the petition and the same is, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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